

**In re the Application of BARRY DOUGLAS ARMOUR
U.S. Appln. No. 10/531,488
Attorney Docket No. 0074-516912**

REMARKS

The Applicants request that the Examiner reconsider the rejections set forth in the Official Action in view of the foregoing amendments and the following remarks.

The Claims

The Examiner objected to Claim 17 because of a minor spelling error. Claim 17 has been amended to correct the error. Accordingly, it is believed that Claim 17 is now in proper form.

35 USC 102(b): Claims 1 to 11, 15, and 20

The Examiner rejected Claims 1 to 11, 15, and 20 as being anticipated by US 2,466,791 (Cook). In making the rejection, the Examiner stated:

Re claims 1,20, Cook teaches a truck including: a chassis (generally 10) supporting a cab 14; and a deck (generally 19) which is supported at least partly by a rearmost axle 28 and wheels 29 by a suspension arrangement (generally 40,40',40"45,48), with a forward part (generally 48) of the suspension arrangement operatively connected to the chassis and a rear part (generally 40") of the suspension arrangement operatively connected to the deck (generally 19) or a deck support frame (generally 19), wherein the deck is tiltable relative to the chassis about a pivot axis (generally 24,52,58,etc.) located in front of the rearmost axle of the truck and arranged such that as the deck tilts rearwardly, the chassis tilts forwardly (to some extent) and said forward part of the suspension arrangement (generally 40,40',40",45,48) moves upwardly relative to the deck, thereby, lowering the deck towards the rearmost axle.

The rejection fails to raise a *prima facie* case of anticipation because it is not based on substantial evidence.

The Applicants agree that Cook shows and describes a truck having some of the features of the Applicants' claimed truck as set forth in Claim 1. However, the Applicants' claimed truck as set forth in Claim 1 includes other features that are not described or suggested in Cook.

The Applicants' claimed truck as set forth in Claim 1 includes a deck and chassis that are arranged such that as the deck tilts rearwardly, the chassis tilts forwardly. The Examiner's

assertion that the Cook truck chassis tilts forward as the deck tilts rearwardly is not based on substantial evidence. More specifically, the Examiner has not pointed to any text or drawing in the Cook patent that clearly shows how the truck provides the claimed feature. Nor is such structure readily apparent from the specification or drawings of Cook. The Examiner's parenthetical comment on this feature, "(to some extent)", suggests that even the Examiner is not sure that the claimed feature is clearly provided by the Cook arrangement. If the Examiner is implying that the claimed feature is inherently present in the Cook truck, then he has failed to explain why the feature is inherently present.

The Applicants' claimed truck as set forth in Claim 1 includes a deck and suspension arrangement that are configured such that as the deck tilts rearwardly, the forward part of the suspension arrangement moves upwardly relative to the deck. The Examiner's assertion that the forward part of the suspension arrangement of the Cook truck moves upwardly relative to the deck is also not based on substantial evidence. More specifically, the Examiner identifies the forward part of the Cook suspension arrangement as pivot connection point 48. Pivot connection 48 is attached to the chassis 10. As described at column 3, lines 34 to 47, of Cook, the pivot connection 48 is a part of a torque resisting means 45 that is constructed and arranged to prevent the axle housing 26 from twisting or rotating when the tilting frame 19 moves from the horizontal position to the tilted position (shown in dashed lines in Figure 1 of Cook). More specifically, in the paragraph beginning at line 42 in column 3, Cook states: "As the tilting frame is moved into the dotted line position shown in Fig. 1, *there is no twisting or rotation of the axle housing or the application of any torque to the universal joint 23 or to the propeller shaft 20.*" (Emphasis added.) Based on the simple mechanics of the Cook design, the torque resisting means 45 cannot rotate in the vertical plane relative to the axle 28. Therefore, pivot connection 48 cannot move vertically either. If pivot connection 48 could somehow move vertically as the Examiner asserts, then the torque resisting means 45 would be rendered inoperable for its intended purpose because the torque resisting means 45 would not prevent the axle housing 26 from rotating around the axle 28.

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Moreover, even assuming that the chassis 10 of the truck described in Cook could tilt forwardly "to some extent" when the deck tilts rearwardly, and assuming that the torque resisting means could be considered the forward part of the suspension arrangement, the pivot connection 48 is forward of the pivot connection 24 of the deck 19 to the chassis 10. Therefore, the vertical distance between the pivot connection and the deck would be greater when the deck is tilted rearwardly than when the deck is in the horizontal position. The assumed arrangement is opposite to the configuration of the Applicants' claimed truck in which the forward part of the suspension arrangement moves upwardly and thus closer to the deck as the deck tilts rearwardly about the pivot connection 24, thereby lowering the deck towards the rearmost axle.

In view of the foregoing explanations of the structure and functionality of the truck described and shown in Cook relative to the configuration of the Applicants' claimed truck, if the Examiner's assertion regarding vertical movement of pivot connection 48 is somehow based on inherency, it is technically incorrect.

To the extent that the forward part of the suspension system in the Cook truck could be considered to be the shackle 40', the truck described in Cook would still not anticipate the Applicants' claimed truck. The shackle 40' is attached to the tilting frame 19. Therefore, as the tilting deck tilts rearwardly, the shackle 40' cannot move upwardly relative to the frame 19. It can only move with it.

The Applicants have noted that Figure 6 of Cook shows an arrangement wherein the forward part of support spring 40 tilts upwardly as the frame 61 and tilting frame 19 tilt rearwardly. Although the Examiner did not rely on Figure 6 of Cook, the Applicants believe it is important to point out that Figure 6 does not anticipate the Applicants' claimed truck. More specifically, as shown in Figure 6, although the forward part of suspension spring 40 moves upwardly, the frame 61 simultaneously moves upwardly further than the forward part. Therefore, Figure 6 does not show an arrangement wherein the forward part of suspension spring 40 "moves upwardly relative to the deck". If anything, it appears that the forward part of suspension spring 40 moves downwardly relative to the frame 61 because it is farther below the

deck when the deck has been tilted rearwardly. Moreover, in the arrangement shown in Figure 6, the pivot axis of the frame 61 is not “in front of the rearmost axle of the truck” as called for in Claim 1.

For all of the foregoing reasons, it should now be clear that Cook does not anticipate the Applicants’ claimed truck as set forth in Claim 1.

Claims 2 to 11 and 15 depend from Claim 1 either directly or indirectly, and thus, include all of the features set forth in Claim 1. Therefore, Claims 2 to 11 and 15 are not anticipated by Cook for at least the same reasons as Claim 1.

The Applicants’ claimed truck as set forth in Claim 20 includes all of the features set forth in Claim 1. Therefore, Claim 20 is not anticipated by Cook for at least the same reasons as Claim 1. Moreover, Claim 20 includes the feature that the deck pivot axis is located in front of the forward part of the suspension arrangement. In the trucks described and shown in Cook (Fig. 2 and Fig. 6) the pivot axis 24 of the tilting frame 19 is located behind the forwardmost part of the suspension spring 40.

To anticipate a claim, the reference must teach every element of the claim. MPEP 2131 and cases cited therein. Since Cook fails to teach every claimed feature of the Applicants’ claimed truck, the rejection of Claims 1, 2 to 11, 15, and 20 is improper and should be withdrawn.

35 USC 103(a): Claims 12, 13, and 14

The Examiner rejected Claims 12, 13, and 14 under 35 USC 103(a) as being unpatentable over Cook in view of US 5,887,880 (Mullican et al.). In explaining this rejection the Examiner stated:

Re claims 12, 14, Cook does not teach an opening or cover in the deck for the springs or their connectors to pass thru [sic]. Mullican teaches a suspension system wherein the deck includes a pair of apertures, shaped recesses

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or moveable covers (for suspension or wheels, see figures) which enable the front ends of the suspension (leaf springs and/or the spring connectors) to extend above a lower part of the deck when the deck is tilted in order to reduce the tilt angle when loading/unloading. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Cook by the general teaching of Mullican to have a suspension system wherein the deck includes a pair of apertures, shaped recesses or moveable covers which enable the front ends of the leaf springs and/or the spring connectors to extend above a lower part of the deck when the deck is tilted in order to reduce the tilt angle when loading/unloading.

Re claim 13, Cook teaches the suspension arrangement includes a pair of spaced apart leaf springs, with the front ends of the leaf springs operatively connected to the chassis, but does not teach the rear ends of the leaf springs operatively connected to the deck or deck support frame via respective air bags configured to enable air to be expelled as the deck is tilted, thereby further lowering the deck towards the rearmost axle. Mullican teaches a suspension system wherein an end of the suspension is operatively connected to the deck or deck support (generally 36, etc.) frame via respective air bags (generally 46) configured to enable air to be expelled as the deck is tilted, thereby further lowering the deck towards the rearmost axle in order to assist in loading/unloading. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Cook by the general teaching of Mullican to have a suspension system wherein an end of the suspension is operatively connected to the deck or deck support frame via respective air bags configured to enable air to be expelled as the deck is tilted, thereby further lowering the deck towards the rearmost axle in order to assist in loading/unloading.

This rejection fails to raise a *prima facie* case of unpatentability because it is not based on substantial evidence. More specifically, Mullican et al. does not describe the features that are missing from Cook relative to the Applicants' claimed truck as set forth in Claim 1. In Mullican et al., there is no teaching or suggestion of operatively connecting a forward end of the suspension arrangement to the chassis and a rearward end of the suspension arrangement to the deck or the deck support frame. Moreover, the chassis and the deck of the truck described and shown in Mullican et al. are not arranged such that as the deck tilts rearwardly, the chassis tilts forwardly. In the truck described in Mullican et al., the chassis moves in the same direction as the deck. See, Figs. 1 and 2 of Mullican et al. The deck and suspension system of the Mullican et al. truck are not arranged such that as the deck tilts rearwardly the forward part of the suspension arrangement moves upwardly relative to the deck. In the truck described in Mullican et al., the front and rear suspension members are directly connected to the deck. See, Figs. 3 to 6

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of Mullican et al. Therefore, the forward part of the suspension arrangement cannot move upwardly relative to the deck.

Claims 12, 13, and 14 are dependent from Claim 1 either directly or indirectly, and thus, include all of the features set forth in Claim 1. The proposed combination of Cook and Mullican et al. does not anticipate the Applicants' claimed truck as set forth in any of Claim 12, 13, or 14. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. MPEP 2143.03 and cases cited therein. Since the proposed combination does not include all of the features of Claims 12, 13, or 14, the rejection of those claims under 35 USC 103(a) is improper and should be withdrawn.

35 USC 103(a): Claims 16 to 19

Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook in view of US 6,461,096 (Mentele et al.). In making this rejection, the Examiner stated:

Re claim 16, Cook does not teach a ramp but Mentele teaches a ramp at or towards the rear end of the deck and which is moveable from a storage position to a loading/unloading position in order to help with safety and uneven terrain (column 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Cook by the teaching of Mentele to have a ramp at or towards the rear end of the deck and which is moveable from a storage position to a loading/unloading position in order to help with safety and uneven terrain.

Re claim 17, Cook as already modified by Mentele in claim 16 teaches the ramp configured to automatically move to the loading/unloading position as the deck is tilted, and to automatically move to the storage position as the deck is retracted from a tilted position.

Re claim 18, Cook as already modified by Mentele in claim 16 teaches the ramp pivotally connected to the deck or deck support frame.

Re claim 19, Cook as already modified by Mentele in claim 16 teaches the ramp foldable across its width, and as configured to automatically fold in the storage position and unfold in the loading/unloading position.

This rejection fails to raise a *prima facie* case of unpatentability because it is not based on substantial evidence. More specifically, Mentele et al. does not describe the features that are

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missing from Cook relative to the Applicants' claimed truck as set forth in Claim 1. In Mentele et al., there is no teaching or suggestion of operatively connecting a forward end of the suspension arrangement to the chassis and a rearward end of the suspension arrangement to the deck or the deck support frame. Moreover, the chassis and the deck of the truck described and shown in Mentele et al. are not arranged such that as the deck tilts rearwardly, the chassis tilts forwardly. In the truck described and shown in Mentele et al., the front and rear suspension members are connected to the chassis and the deck slides relative to the chassis from the horizontal position to the tilted position.

Claims 16 to 19 are dependent from Claim 1 either directly or indirectly, and thus, include all of the features set forth in Claim 1. The proposed combination of Cook and Mentele et al. does not anticipate the Applicants' claimed truck as set forth in any of Claims 16 to 19 because all of the features set forth in those claims are not taught or suggested by the proposed combination of references. Therefore, the rejection of Claims 16 to 19 under 35 USC 103(a) is improper and should be withdrawn.

The New Claims

Claims 21 and 22 are being added to this application. Claim 21 is an independent claim that includes all of the features of Claim 1 and the additional feature that the forward part of the suspension arrangement is connected to the chassis at a chassis operative connection. In the Applicants' claimed truck as set forth in Claim 21 the pivot axis is positioned in front of the rearmost axle and in front of the chassis operative connection. Claims 21 and 22 are believed to be novel and nonobvious relative to the references cited by the Examiner in the Official Action.

CONCLUSION

In view of the foregoing amendments and remarks, it is believed that the claims of this application are in condition for allowance. The Applicants respectfully request that the Examiner reconsider the rejections of the claims in the light of the amendments and remarks

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presented herein.

Respectfully submitted,

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